

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
INDUSTRIAL MINERAL PRODUCTS, INC.,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 77-162-A

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250 civil penalty, arises from the alleged violation (airborne dust) of Section 9.15(a) of respondent's Regulation I. The hearing was held before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, convened at Tacoma, Washington, on February 6, 1978. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant was represented by its President, Victor Hoffman; respondent was represented by its attorney, Keith D. McGoffin. Court

1 reporter Jennifer Roland of Olympia recorded the proceedings.

2 Having heard the testimony and considered the exhibits and arguments
3 and being fully advised, the Hearings Board makes the following

4 FINDINGS OF FACT

5 I

6 Respondent pursuant to RCW 43.21B.260, has filed with this Hearings
7 Board a certified copy of its Regulation I containing respondent's
8 regulations and amendments thereto, of which official notice is taken.

9 II

10 Regular operation of the ASARCO smelter at Tacoma, Washington
11 results in the daily production of hundreds of tons of slag. This
12 material, which resembles a high-iron content basalt, is in a molten
13 stage when it leaves the Smelter. The slag is conveyed in lorries
14 from the Smelter to the slag dump, on Commencement Bay, where it is
15 processed.

16 III

17 Appellant, Industrial Mineral Products, Inc., by agreement with
18 ASARCO, processes the slag into a useful land-fill material. This is
19 done by first pouring the molten slag onto the site, and allowing it
20 to harden. A bulldozer equipped with a ripper then "rips" furrows
21 in the slag which allows water to penetrate and further cool the slag.
22 This cooling water also acts to contain dust which would otherwise be
23 emitted when the ripped and cooled slag is finally pushed into piles.
24 The water for this process is pumped from Commencement Bay, and may not
25 always be available due to low tides, upset of the pump or other
26 factors. Processing of the slag must continue, nevertheless, if that

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 operation is to keep pace with the slag output from the Smelter.

2 IV

3 On October 12, 1977 respondent's inspector observed airborne dust
4 arising from the appellant's work site as slag was being processed. The
5 dust cloud was plainly visible from some 200 to 250 yards, and was dark
6 in color as it rose high into the air. No dust suppression efforts were
7 visible to respondent's inspector. Appellant was unable to say whether
8 its slag-watering system was operating properly at the time in question.

9 V

10 Appellant has been assessed two prior civil penalties of \$250
11 each for dust emissions occurring on October 1 and 11, 1976. Those
12 penalties were appealed to this Hearings Board which affirmed but
13 suspended them. Industrial Mineral Products, Inc. v. Puget Sound Air
14 Pollution Control Agency, PCHB No. 1096 (1977).

15 VI

16 Any Conclusion of Law which should be deemed a Finding of Fact is
17 hereby adopted as such.

18 From these Findings the Board comes to these

19 CONCLUSIONS OF LAW

20 I

21 The Notice and Order of Civil Penalty now on appeal cites Section
22 9.15(a) of respondent's Regulation I which states as follows:

23 (a) It shall be unlawful for any person to cause or permit
24 particulate matter to be handled, transported or stored without
25 taking reasonable precautions to prevent the particulate matter
from becoming airborne.

1 II

2 Respondent proved a prima facie violation by showing that airborne
3 dust, from the slag processing site under appellant's control, could be
4 seen. From that a legitimate inference can be made that "reasonable
5 precautions" were not taken. The burden of proceeding or going forward
6 with the evidence at that point is upon appellant to prove that it had
7 taken "reasonable precautions" to prevent dust from becoming airborne.
8 Weyerhaeuser Co. v. Puget Sound Air Pollution Control Agency, PCHB No.
9 1076 (1977); Kaiser Aluminum Co. v. Puget Sound Air Pollution Control
10 Agency, PCHB No. 1079 and 1085 (1977); and Boulevard Excavating, Inc.
11 v. Puget Sound Air Pollution Control Agency, PCHB No. 77-69 (1977).

12 Appellant failed to carry that burden in this appeal, since it offered
13 no evidence that any precautions were being taken at the time the airbo
14 dust was observed. Appellant therefore violated Section 9.15(a) of
15 respondent's Regulation I.

16 III

17 Appellant could not say whether its slag-watering system was
18 operating properly in this instance. It is therefore possible that the
19 dust emissions here involved were caused by the unforeseeable breakdown
20 of that water system. If, in the future, that theory should prove true,
21 appellant may take advantage of Section 9.16 of respondent's Regulation I
22 which states:

23 Emissions exceeding any of the limits established by this
24 Regulation as a direct result of start-ups, periodic shutdown,
25 or unavoidable and unforeseeable failure or breakdown, or
26 unavoidable and unforeseeable upset or breakdown of process
equipment or control apparatus, shall not be deemed in violation
provided the following requirements are met:

(1) The owner or operator of such process or equipment shall immediately notify the Agency of such occurrence, together with the pertinent facts relating thereto regarding nature of problem as well as time, date, duration and anticipated influence on emissions from the source.

(2) The owner or operator shall, upon the request of the Control Officer, submit a full report including the known causes and the preventive measures to be taken to minimize or eliminate a re-occurrence.

This provision, if appropriate and complied with, will exculpate the appellant from what would otherwise be a violation of either Section 9.15(a) here involved, or any permit or construction approval issued by respondent. The initial, immediate notice required by Section 9.16(1) may be made by telephone.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Pollution Control Hearings Board enters this

ORDER

Notice and Order of Civil Penalty No. 3548, assessing a civil penalty of \$250, is hereby affirmed.

DONE at Lacey, Washington, this 9th day of February, 1978.

POLLUTION CONTROL HEARINGS BOARD


DAVE S. MOONEY, Chairman


CHRIS SMITH, Member